IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.558 of 1989

Date of Decision: 16.05.2007

Siri Ram through L.Rs. ..Appellant

Vs.

Gian Chand through ..Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.D.D.Bansal, Advocate,
for the appellant.

Mr. J.R.Mittal, Senior Advocate Advocate,
with Mr.Kashmir Singh, Advocate,
for the respondent.

Vinod K.Sharma,J. (Oral)

This regular second appeal has been filed against the judgments and decrees passed by the courts below vide which suit for mandatory injunction filed by the appellant-plaintiff was ordered to be dismissed.

The plaintiff-appellant had filed a suit for mandatory injunction directing the defendant to reconstruct the shop and deliver its possession to the plaintiff-appellant as tenant. It was pleaded that the plaintiff-appellant was in possession of the shop in dispute as tenant under the defendant and he had paid rent up to 31.3.1985. It was further claimed that the defendant had entered into an agreement with the plaintiff-appellant under which he was to vacate the premises and the landlord defendant was to reconstruct the same within one and a half months and thereafter hand over the possession to the plaintiff on annual rent of Rs.12,500/-. It was further claimed that the plaintiffs vacated the shop. However, the defendant failed to reconstruct the shop and therefore it was claimed that he was entitled to mandatory injunction for enforcing the said agreement entered into between the parties.

The suit was contested by the defendant wherein allegations made by the plaintiff-appellant were controverted. The execution of the agreement dated 6.8.1985 was denied. However, it was admitted that the parties had entered into an agreement under which the plaintiff was to vacate premises to allow the defendant respondent to reconstruct the same. However, it was claimed that as the plaintiff-appellant had failed to comply with the terms and conditions and the said agreement was cancelled. Receipt of rent was also denied. It was also claimed that the suit as framed was not competent. The plaintiff-appellant filed replication wherein the facts pleaded in the plaint were reiterated.

On the pleadings of the parties the learned trial court framed

the following issues:-

1. Whether any valid agreement was executed between the parties on 6.8.1985? OP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether suit is not properly valued for the purposes of court fee and jurisdiction? OPD
4. Whether the plaintiff is entitled to the specific performance of the agreement? OPP
5. Whether the alleged agreement was cancelled and fresh agreement was executed on 14.10.1985? OPD
6. Whether the plaintiff is entitled to the injunction prayed for ? OPP
7. Relief.

The learned trial court decided issue No.1 in favour of the plaintiff-appellant and held that the parties had entered into an agreement dated 6.8.1985. However, the learned trial court was pleased to hold that the agreement dated 6.8.1985 was not enforceable in law as it went contrary to the provisions of the East Punjab Rent Restriction Act, 1949 (for short the Act). It was also held that the suit as framed was not competent as remedy, if any, with the plaintiff appellant was to file a suit for specific performance. The courts also held that the plaintiff-appellant cannot take any benefit of the said agreement as it failed to comply with the terms of the said agreement as he failed to hand over the vacant possession to the defendant-

respondent for reconstruction and accordingly the suit was dismissed.

The findings recorded by the learned trial court were affirmed by the learned lower appellate court and the appeal was also dismissed.

Mr. D.D.Bansal, learned counsel appearing for the appellant vehemently contended hat the finding recorded by the learned courts below are on the face of it perverse and therefore, cannot be sustained.

Learned counsel for the appellant further contended that following substantial questions of law arise for consideration in this appeal.

1. Whether it was open to the learned courts below to reject the agreement dated 6.8.1985 on the plea that covenants of the said agreement were contrary to the Act and therefore, not bindiing?

The contention of the learned counsel for the appellant in support of his case was that the Act does not bar the execution of the agreement between the parties to enter into a fresh agreement of rent and therefore, the learned courts below were wrong in rejecting the said agreement being contrary to the provisions of the Act and therefore, the contention of the learned counsel for the appellant was that the appeal deserves to be allowed and the questions of law as framed deserve to be answered in favour of the appellant.

I have considered the arguments raised by the learned counsel for the appellant. Though there is force in the contention of the learned counsel for the appellant that the agreement dated 6.8.1985 could not have been ignored on the ground that the same was in violation of the

provisions of the Act, however, the appeal deserves to be dismissed on other two grounds i.e. (i) once the plaintiff-appellant had himself failed to comply with the agreement dated 6.8.1985 it was not open to him to seek its enforcement; (ii) the plaintiff-appellant had failed to hand over the vacant possession of the property in dispute and therefore, was estopped from claiming any benefit under the said agreement. Thus, the learned courts below were right in coming to the conclusion that the suit filed by the plaintiff was not competent. Learned courts below were also right in holding that when an alternative remedy of specific performance of the agreement was available to the plaintiff-appellant and suit for mandatory injunction was not competent. Learned counsel for the appellant has failed to give any convincing reasons to differ with the findings of fact recorded by the learned courts below in dismissing the suit on these two grounds.

For the reasons stated above, there is no merit in the present appeal which is accordingly dismissed.

May 16,2007 **(Vinod K.Sharma)**
rp Judge